

Introduced by Senator Sher

February 19, 2004

An act to amend Sections 66604, 66639, 66640, and 66641.5 of, and to add Sections 66612 and 66638.5 to, the Government Code, relating to the San Francisco Bay Conservation and Development Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 1568, as introduced, Sher. San Francisco Bay Conservation and Development Commission.

(1) Existing law establishes the area of jurisdiction of the San Francisco Bay Conservation and Development Commission.

This bill would require a person who is acting as an agent for a transferor of an interest in real property that is located within the commission's jurisdiction, or the transferor, if he or she is acting without an agent, to disclose to a prospective transferee, when he or she has actual knowledge, the fact that the property is located within that jurisdiction.

(2) Existing law requires a person or governmental agency to secure a permit from the commission if the person or agency wishes to place fill in, to extract materials from, or to make any substantial change in use of, any water, land, or structure within the area of the commission's jurisdiction.

This bill would authorize the commission to revoke a permit in whole or in part, would provide the grounds for complete or partial revocation, and would provide procedures for challenging and enforcing the commission's revocation order.

(3) Existing law authorizes an aggrieved person to file with the superior court a petition for writ of mandate for review of a cease and desist order of the commission, within 30 days after service of a copy

of the order. Failure to file the specified action does not preclude a party from challenging the order in any judicial proceeding brought to enforce the order or for other civil remedies.

This bill, instead, would extend these provisions to include civil penalty orders and permit revocation orders issued by the commission, would require the person to file the specified action within 30 days after service of the order, and would provide that failure to file the action precludes the party from challenging the order in all circumstances.

(4) Existing law imposes civil penalties in specified amounts for violations of provisions relating to San Francisco Bay conservation and development.

This bill would increase the amounts for those penalties and would impose civil penalties for negligent violations.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 66604 of the Government Code is
2 amended to read:

3 66604. The Legislature further finds and declares that in order
4 to protect the present shoreline and body of the San Francisco Bay
5 to the maximum extent possible, it is essential that the commission
6 be empowered to issue or deny permits, after public hearings, for
7 any proposed project that involves placing fill, extracting
8 materials, or making any substantial change in use of any water,
9 land, or structure within the area of the commission's jurisdiction,
10 *and those permits should run with the land.*

11 SEC. 2. Section 66612 is added to the Government Code, to
12 read:

13 66612. (a) A person who is acting as an agent for a transferor
14 of an interest in real property that is located within the
15 commission's jurisdiction, or the transferor, if he or she is acting
16 without an agent, shall disclose to a prospective transferee the fact
17 that the property is located within the commission's jurisdiction,
18 if the transferor, or the transferor's agent, has actual knowledge
19 that the property is within the commission's jurisdiction.

20 (b) This section applies to a transfer of any property interest,
21 including, but not limited to, transfer of a title, a lease, an option
22 to buy, or a license.



1 (c) The disclosure required under this section shall occur as
2 soon as practicable before the execution of a contract to transfer
3 the property interest or, if no contract is executed, before the
4 transfer of the interest.

5 (d) Section 1103.13 of the Civil Code applies to the disclosure
6 required under this section.

7 (e) The requirement in this section for disclosure does not limit
8 or abridge any obligation for disclosure created by any other law
9 or that may exist in order to avoid fraud, misrepresentation, or
10 deceit in the transfer transaction.

11 SEC. 3. Section 66638.5 is added to the Government Code, to
12 read:

13 66638.5. (a) The commission may revoke a permit issued by
14 the commission in whole or in part.

15 (b) The grounds for a complete or a partial revocation shall
16 include one or more of the following:

17 (1) The intentional or negligent inclusion of inaccurate,
18 erroneous, or incomplete information in connection with the
19 application for a permit or amendment of a permit, if the
20 commission finds that the information was material to the issuance
21 or approval of the permit or amendment.

22 (2) The failure of the applicant to comply fully with a provision
23 of applicable law pertaining to the need to provide notice of a
24 pending application for a permit or an amendment of a permit to
25 members of the public, if the commission finds that the views of
26 persons not notified were not made known to the commission and
27 that those views could have caused the commission to impose
28 additional or different conditions upon the issuance or approval of
29 a permit or amendment, or to deny the application.

30 (3) Two or more serious violations of a single permit within a
31 period of five years.

32 (c) The commission shall adopt regulations establishing the
33 procedure for revocation of a permit. The procedure shall require
34 the commission to provide to the permit holder a written notice that
35 explains the basis for the revocation, and shall ensure, unless the
36 permit has been repeatedly violated, as determined by the
37 commission, that an opportunity is provided to correct any
38 deficiency.

39 (d) If a person or entity to whom a permit revocation order is
40 issued chooses to challenge the legality of the order, the person or

entity, within 90 days after service of the order, shall file with the superior court a petition for a writ of mandate pursuant to Section 1094.5 of the Code of Civil Procedure. If no aggrieved party petitions for a writ of mandate within the time provided by this subdivision, a permit revocation order issued by the commission is not subject to further review by any court or agency, except that the commission may grant review of its own permit revocation order after the expiration of the time limit set by this upon a showing of good cause.

(d) A person or entity who has had a permit revoked by the commission may not submit a new application for a permit or amendment to authorize the same or similar activity until one year has passed from the effective date of the permit revocation order, unless the commission specifies a shorter period in the revocation order.

SEC. 4. Section 66639 of the Government Code is amended to read:

66639. (a) Within 30 days after service of a copy of a cease and desist order issued by the executive director under Section 66637 or the commission under Section 66638, ~~any or of a civil penalty order or permit revocation order issued by the commission, an aggrieved party may challenge the order by filing~~ ~~may file~~ with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 of the Code of Civil Procedure. ~~Failure to file such an~~ *An aggrieved party who does not file that action shall not preclude a party from challenging* ~~may not challenge~~ the reasonableness and validity of ~~an~~ *the* order of the executive director or the commission in *all circumstances, including, but not limited to, any judicial proceedings proceeding* brought to enforce ~~such the order or for other civil remedies.~~

(b) The evidence before the court in ~~any~~ *a* proceeding to review an order of the commission described in subdivision (a) shall consist of the record before the commission, and in cases where it is claimed that the findings are not supported by the evidence, abuse of discretion is established only if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

SEC. 5. Section 66640 of the Government Code is amended to read:

66640. (a) Upon the failure of ~~any~~ a person to comply with ~~any a permit, a cease and desist order, or a permit revocation order~~ issued by the commission, ~~or with any provision of this title~~, the Attorney General, upon request of the commission, shall petition the superior court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining ~~such the~~ person or persons from continuing any activity in violation of the ~~cease-and-desist permit, order, or provision of this title~~.

(b) The evidence before the court shall consist of the record before the commission, and any other relevant evidence ~~which~~ *that*, in the judgment of the court, should be considered to effectuate and implement the policies of this title. In every ~~such~~ case *brought under this section*, the court shall exercise its independent judgment on the evidence.

(c) The court shall issue an order directing defendants to appear before the court at a time and place certain and show cause why the injunction should not be issued. The court may grant ~~such any~~ prohibitory or mandatory relief ~~as that~~ may be warranted.

(d) The court may stay the operation of the cease and desist order after notice of the commission and hearing. ~~Any such~~ *The* stay may be imposed or continued only if it is not against the public interest.

SEC. 6. Section 66641.5 of the Government Code is amended to read:

66641.5. (a) In addition to any other penalties, any person or entity who violates this title is subject to a civil penalty of not to exceed ~~five thousand dollars (\$5,000)~~ *thirty thousand dollars (\$30,000)*. *In determining the amount of a civil penalty, the court shall consider the factors listed in subdivision (a) of Section 66641.9.*

(b) In addition to any other penalties, any person or entity who intentionally and knowingly undertakes any activity requiring a permit pursuant to subdivision (a) of Section 66632 without that permit, or who intentionally and knowingly violates any term or condition of any permit issued by or on behalf of the commission, is subject to a civil penalty of not less than ~~fifty dollars (\$50)~~ *one hundred dollars (\$100)*, nor more than ~~five thousand dollars (\$5,000)~~ *ten thousand dollars (\$10,000)*, per day for each day in which that violation occurs or persists.

(c) Except as provided in Section 818, whenever a person or entity has intentionally and knowingly violated this title or any term or condition of a permit issued by or on behalf of the commission, the commission may maintain an action, in addition to the actions authorized pursuant to subdivisions (a) and (b), for the recovery of exemplary damages. In determining the amount to be awarded, the court shall consider the amount of damages necessary to deter further violations.

(d) *In addition to any other penalties, a person or entity who negligently undertakes an activity requiring a permit pursuant to subdivision (a) of Section 66632 without that permit, or who negligently violates any term or condition of any permit issued by or on behalf of the commission, is subject to a civil penalty of not less than fifty dollars (\$50) nor more than five thousand dollars (\$5,000) per day for each day in which that violation occurs or persists.*

(e) Civil liability may be administratively imposed by the commission in accordance with Section 66641.6 on any person or entity for any violation of this title or any term or condition of a permit issued by or on behalf of the commission in an amount ~~which~~ that shall be not less than ten dollars (\$10), nor more than ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000), for each day in which that violation occurs or persists, but the commission ~~shall~~ may not administratively impose a fine of more than ~~twenty thousand dollars (\$20,000)~~ thirty thousand dollars (\$30,000) for a single violation.

~~(e)~~

(f) Any moneys recovered by the commission pursuant to this section shall be deposited in the fund established and administered pursuant to Section 66647.